Criminal Misc.No.8107-M of 2007

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Tripta Vs. The State of Punjab

Present: Mr.G.S.Lalli, Advocate,
for the petitioner.

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This is a second attempt on the part of the petitioner to seek pre-arrest bail in a case registered against her under Section 304-B IPC. She is mother-in-law, who is accused of having caused harassment to her late daughter-in-law, which led her to commit suicide. Earlier petition filed by the petitioner was dismissed on 26.12.2006 on merits. She is now again before the court asking for pre-arrest bail. Obviously, the first hurdle which the petitioner would face is regarding maintainability of the second anticipatory bail application, the first having been rejected on merits. In this regard, the counsel has referred to Yuvraj Gaud Vs. State of Madhya Pradesh and another, 2005(1) RCR (Criminal) 618 and Baboo Singh Vs. State of U.P., AIR 1978 SC 527. Madhya Pradesh High Court in Yuvraj Gaud's case (supra), while holding that second anticipatory bail is maintainable, has relied upon the decision of the Supreme Court in Baboo Singh's case (supra). This (Baboo Singh's) was a case where a bail pending appeal was under consideration and in this background, it was held that an order refusing an application for bail does not necessarily preclude another, on a later occasion giving more materials and further developments. It was further held that the court is not barred from its second consideration at a later stage and that an interim direction is not a conclusive adjudication and further that an updated reconsideration is not overturning an earlier negation. Such observations would clearly apply to a

case of bail pending trial or appeal, but in case of anticipatory bail, some different consideration may arise. It is not a matter of dispute that different views have been expressed by various Courts as regards the maintainability of second anticipatory bail application. Contrary to ***Yuvraj Gaud's case*** (supra), Full Bench of Calcutta High Court in ***Mava Rani Guin Vs. State of West Bengal***, 2003 (1) RCR (Crl.) 774 (Calcutta) has ruled that entertaining a second application for anticipatory bail would amount to review or re-consideration of the earlier order as the accusation remains unchanged. Accordingly, it was held that second application for anticipatory bail, even if new circumstances develops after rejection or disposal of the earlier application, is not maintainable. Similar view is taken by ***Suresh Chand Vs. State of Rajasthan,*** 2002(2) RCR (Crl.) 6 (Rajasthan), ***Mithu Vs. State of Rajasthan,*** 2000 Cr.L.R. (Raj.) 483 and ***Pawan Kumar Beriwal Vs. State of West Bengal,*** 1998(4) Crimes 246. Full Bench of Rajasthan High Court in a case ***Ganesh Raj Vs. State of Rajasthan and others,*** 2005 (3) RCR (Criminal) 30, after referring to different decisions, has held that second or subsequent anticipatory bail application can be filed if there is a change in the fact, situation or in law which require the earlier view being interfered with or where the earlier finding has become obsolete. It would thus be seen that even while holding that the second application for anticipatory bail would be maintainable, the Full Bench of Rajasthan High Court has limited its scope in those circumstances as enumerated. Accordingly, second or subsequent anticipatory bail application cannot be entertained on ground of new circumstances,

further developments, different consideration, some more details, new documents or illness of the accused. Otherwise also, it may be difficult to visualise any change of material or development or situation where change of circumstances can really be pleaded in a case of anticipatory bail. Repeat of pre-arrest bail, by very nature of it, would exclude any possibility of any new facts coming to light either on account of investigation or otherwise. Even in Ganesh Raj's case (supra), it was held that under no circumstances, the second or successive anticipatory bail application shall be entertained by Session/Addl.Sessions Judge. It may require consideration if there would be any valid justification to say that Sessions Court would not have power to entertain second anticipatory bail application, but the High Court would be so entitled when the source of power is the same. In any event, one thing is quite obvious that second bail application or prayer for anticipatory bail is maintainable only if there is some change in fact, situation or in law or where earlier finding has become obsolete. Even in the case of Yuvraj Gaud (supra), it is observed that it shall be open for the court to reject the second anticipatory bail application even summarily on the ground that the said second petition is nothing but a repetition of the earlier petition and no new grounds are disclosed in the second petition. As per ***Ganesh Raj's case*** (supra), second anticipatory bail application cannot be entertained on new grounds. ***Mava Rani Guin's case*** (supra), a Full Bench decision has viewed that second anticipatory bail application is not maintainable. Without going into aspect of maintainability of the second petition for anticipatory bail, it can be said that the petitioner has not brought out or pointed out anything of

the nature, which was or could not be disclosed in the earlier petition. Only point highlighted by the counsel for the petitioner is on the basis of an application given to S.S.P.Ludhiana, Annexure P-1, statedly by one Vinod Sharma asking for cancellation of FIR. This application is dated 14.12.2006, i.e., even prior to the date of rejection of the anticipatory bail of the petitioner by Sessions Court, Ludhiana, which is dated 18.12.2006. In para 1 of this application, it is disclosed that the applicant is daughter-in-law of the petitioner, whereas the same is signed by Vinod Sharma, a male member, may be another son of the petitioner. All these issues could well have been agitated in the earlier petition. Accordingly, no new material is disclosed in the present petition, which could call for any interference. It is a case where there is a requirement of custodial interrogation. No case for grant of anticipatory bail, thus, is made out and the petition is accordingly dismissed.

February 19, 2007 (RANJIT SINGH)
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